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[IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES.]

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4th Session. }

SENATE.

{ REPORT
No. 1.

ADJUSTMENT OF TITLE TO ISLE OF PINES.

DECEMBER 11, 1922.—Ordered to be printed.

U. S. Congress Senate.

Mr. LODGE, from the Committee on Foreign Relations, submitted the following

REPORT.

[To accompany Executive J. Fifty-eighth Congress, second session.]

The Committee on Foreign Relations, to whom was referred Executive J, Fifty-eighth Congress, second session, a treaty between the United States and Cuba, signed on March 2, 1904, for the adjustment of title to the ownership of the Isle of Pines, having had the same under consideration, report it with the recommendation that the Senate advise and consent to its ratification.

The ratification of the treaty is urged by the President in the following letter to the chairman:

THE WHITE HOUSE,
Washington, November 28, 1922.

HON. HENRY CABOT LODGE,
United States Senate, Washington, D. C.

MY DEAR SENATOR LODGE: I am writing to call your attention to the treaty negotiated between the Government of Cuba and that of the United States March 2, 1904, which has not been ratified by the Senate. This treaty relates to the relinquishment of all claims of title to the Isle of Pines on the part of the United States, which possible claim was suggested by the language of the treaty of peace with Spain.

I am inclosing to you herewith a review of the treaty status and our relationship to the Isle of Pines, as recited in a letter by the Secretary of State to Senator McCormick. It is manifest that this Government has no intention ever to make claim to any title to the Isle of Pines, and, as the Secretary says in the letter to which I have above referred, it seems altogether desirable that the ratification of the treaty be made and thereby remove any possible cause of friction between the two Governments, and put an end to any uncertainty in the minds of the inhabitants of the island concerning its relationship to the Government of Cuba.

Very truly yours,

WARREN G. HARDING.

[Inclosure.]

OCTOBER 16, 1922.

MY DEAR SENATOR MCCORMICK: With further reference to your letter of July 28, addressed to the Assistant Secretary, in regard to the Isle of Pines, I beg to advise you as follows:

The Isle of Pines is situated about 50 miles from the coast of Cuba, and, therefore, as was indicated by the Supreme Court of the United States in its opinion in the case of *Pearcy v. Stranahan* (205 U. S. 257), under the principles of international law

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applicable to such coasts and shores as those of Florida, the Bahamas, and Cuba, it would ordinarily be regarded as an integral part of Cuba.

Prior to 1898 the Isle of Pines was a Spanish possession, apparently governed as a municipal district of the Province of Habana, Cuba.

With respect to Cuba, the joint resolution passed by the Congress of the United States April 20, 1898, provides (4) "That the United States hereby disclaims any disposition or intention to exercise sovereign jurisdiction or control over said island, except for the pacification thereof; and asserts the determination when that is accomplished to leave the government and control of the island to its people." (38 Stat. 378.)

The treaty of peace between the United States and Spain proclaimed April 11, 1899, makes no specific mention of the Isle of Pines, but by Article I of the treaty "Spain relinquishes all claim of sovereignty over and title to Cuba," and by Article II, "Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and to the island of Guam in the Marianas or Ladrones."

During the military occupation of Cuba by the United States the Isle of Pines was apparently administered as a municipal district of the Province of Habana. (Report of Census of Cuba published by War Department in 1900.)

When the Government of Cuba was turned over to the Cubans May 20, 1902, there was an exchange of communications between the military governor and the President of Cuba to the effect that the Isle of Pines was to continue de facto under the jurisdiction of the Government of Cuba subject to treaty arrangements as to future disposition.

The Platt amendment (Article VI), and Article VI of the treaty with Spain proclaimed July 2, 1904, provide that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, "the title thereof being left to future adjustment by treaty." March 2, 1904, a treaty was signed by which the United States relinquished all claims of title to the Isle of Pines under the said treaty of peace with Spain. The Senate of the United States has never consented to the ratification of this treaty.

It therefore appears that the United States has never taken possession of the Isle of Pines as having been ceded by the treaty of peace with Spain, and that it has been uniformly governed by the Republic of Cuba since that Republic came into existence, the United States recognizing Cuba as rightfully exercising de facto sovereignty until otherwise provided for.

In the case of *Pearcy v. Stranahan*, before mentioned, the court considered that it was justified in assuming that the Isle of Pines was always treated by the representatives in Cuba of the President of the United States as an integral part of Cuba. The court added that this was "no doubt to be expected in view of the fact that it was such at the time of the execution of the treaty and its ratification, and that the treaty did not provide otherwise in terms, "to say nothing of the general principles of international law before mentioned."

The political department of the Government has apparently, as indicated by the treaty it concluded with Cuba March 2, 1904, and its other dealings with this subject above referred to, taken the ground that under the treaty of peace with Spain the Isle of Pines was not one of the "other islands now under Spanish sovereignty in the West Indies" and ceded to the United States by the treaty, but was an integral part of Cuba over which Spain relinquished claim to sovereignty by the treaty. In any event, the United States has undoubtedly indicated that it did not desire to assert any title to the island under the treaty of peace with Spain, but wished to quitclaim in favor of Cuba any shadow of title it might have under that treaty.

It can not be doubted that in adopting this attitude the Government of the United States was influenced by the proximity of the island to Cuba and the consequently applicable principles of international law, and by the fact that the Isle of Pines had uniformly been administered as an integral part of Cuba.

Referring to the suggestion on this point in the attached letter to Mr. Wall to Colonel Rosenfeld, it may be said that there was no private agreement or understanding between the department and the Government of Cuba relative to the "pigeonholing" of the said treaty of March 2, 1904.

I may add that the department considers it desirable in the interest of relations between the United States and Cuba that the treaty before the Senate should be approved. The ratification of the treaty would leave the situation with respect to Cuban exercise of authority over the island as it is at the present time. Possible causes of friction between the two Governments would be obviated and the uncertainty in the minds of the inhabitants of the island as to its status would be removed.

In accordance with your request, I return the papers which accompanied your letter under acknowledgment.

Sincerely yours,

CHARLES E. HUGHES.

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The committee also prints as a part of its report the following correspondence from Hon. Elihu Root, then Secretary of State:

DEPARTMENT OF STATE,
Washington, January 8, 1906.

HON. SHELBY M. CULLOM,
Chairman Committee on Foreign Relations, United States Senate.

DEAR SENATOR: I send you a note of the passage in Hall's International Law, to which I referred in our conversation the other day, relating to the Isle of Pines. It is to be found on pages 124 and 125 of the fifth edition, 129 and 130 of the fourth edition, and for greater convenience I inclose a typewritten copy of the passage. You will see that it contains a very good description of the physical conditions, and that, as I mentioned to you, the undoubted appurtenance of the Archipelago de los Canarios, including the Isle of Pines, to the country called Cuba, is used as an illustration of the general proposition. I dare say the same thing is to be found in other writers, but I have not examined; I merely happened to notice this. This passage was written while Cuba still belonged to Spain, and undoubtedly would be accepted by international lawyers as correctly describing the status of the Isle of Pines at the time of the treaty of Paris.

Very sincerely yours,

ELIHU ROOT.

[Inclosure.]

Apart from questions connected with the extent of territorial waters, which will be dealt with later, certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the shores of Cuba, and in the Pacific are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water and either form a line more or less parallel with land or compose systems of their own, in both cases inclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case, on the south coast of Cuba the Archipelago de los Canarios stretches from 60 to 80 miles from the mainland to La Isla de Pinos. Its length from the Jardines Bank to Cape Frances is over a hundred miles. It is inclosed partly by some islands, mainly by banks, which are always awash, but upon which the tides are very slight. The depth of water is at no time sufficient to permit of navigation. Spaces along these banks many miles in length are unbroken by a single inlet. The water is uninterrupted, but access to the interior gulf or sea is impossible. At the western end there is a strait 20 miles or so in width, but not more than 6 miles of channel intervene between two banks which rise to within 7 or 8 feet from the surface and which do not, consequently, admit of the passage of seagoing vessels. In cases of this sort the question whether the interior waters are or are not lakes inclosed within the territory must always depend upon the depth upon the banks and the width of the entrances. Each must be judged upon its own merits. But in the instance cited there can be little doubt that the whole Archipelago de los Canarios is a mere salt-water lake and that the boundary of the land of Cuba runs along the exterior edge of the banks. (Pp. 124, 125, Hall on International Law, 5th ed.)

DEPARTMENT OF STATE,
Washington, November 27, 1905.

CHARLES RAYNARD, Esq.,
President of American Club, Isle of Pines, West Indies.

DEAR SIR: I have received your letter of October 25, in which you say, "Kindly advise me at your very earliest convenience the necessary procedure to establish a territorial form of government for the Isle of Pines, West Indies, United States of America."

It is no part of the duty of the Secretary of State to give advice upon such subjects. I think it proper, however, to answer your inquiry so far as it may be necessary to remove an error under which you appear to rest concerning the status of the Isle of Pines and your rights as residents of that island.

There is no procedure by which you and your associates can lawfully establish a territorial government in that island. The island is lawfully subject to the control



and government of the Republic of Cuba, and you and your associates are bound to render obedience to the laws of that country so long as you remain in the island. If you fail in that obedience you will be justly liable to prosecution in the Cuban courts and to such punishment as may be provided by the laws of Cuba for such offenses as you commit. You are not likely to have any greater power in the future. The treaty now pending before the Senate, if approved by that body, will relinquish all claim of the United States to the Isle of Pines. In my judgment the United States has no substantial claim to the Isle of Pines. The treaty merely accords to Cuba what is hers in accordance with international law and justice.

At the time of the treaty of peace which ended the war between the United States and Spain the Isle of Pines was, and had been for several centuries, a part of Cuba. I have no doubt whatever that it continues to be a part of Cuba, and that it is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty, and Mr. Hay signed it, and I expect to urge its confirmation. Nor would the rejection of the pending treaty put an end to the control of Cuba over the island. A treaty directly contrary to the one now pending would be necessary to do that, and there is not the slightest prospect of such a treaty being made. You may be quite sure that Cuba will never consent to give up the Isle of Pines, and that the United States will never try to compel her to give it up against her will.

Very respectfully,

ELIHU ROOT.



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